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11

12 SUPERIOR COURT OF CALIFORNIA  
13 COUNTY OF LOS ANGELES  
14

15 LOS ANGELES UNIFIED SCHOOL  
DISTRICT,

16 Plaintiff,

17 v.

18 UNITED TEACHERS LOS ANGELES,  
and DOES 1 through 100, inclusive,

19 Defendant.  
20

Case No.

ASSIGNED FOR ALL PURPOSES TO JUDGE

**PLAINTIFF LOS ANGELES UNIFIED  
SCHOOL DISTRICT'S *EX PARTE*  
APPLICATION FOR TEMPORARY  
RESTRAINING ORDER AND ORDER TO  
SHOW CAUSE RE PRELIMINARY  
INJUNCTION; MEMORANDUM OF  
POINTS AND AUTHORITIES**

**HEARING**

DATE: January 9, 2019

TIME: 8:30 a.m.

DEPT.:

Complaint filed: January 8, 2019

Exempt from filing fees pursuant to  
Gov. Code § 6103

1 **EX PARTE APPLICATION**

2 The United Teachers Los Angeles (UTLA) and the Los Angeles Unified School District  
3 (LAUSD) are parties to an agreement that contains a clause prohibiting UTLA from striking or  
4 encouraging any kind of strike. The agreement allows for the parties to terminate the agreement on  
5 10 days' notice from one side to the other.

6 Ten years ago, in May 2009, UTLA announced a strike without providing the notice of  
7 termination required under the agreement. LAUSD applied to this Court under Labor Code section  
8 1126 to prohibit the strike until UTLA complied with the requirements of the agreement.

9 On May 13, 2009, this Court granted the requested relief, enjoining the strike. (*See LAUSD*  
10 *v. UTLA*, LASC Case No. BC413707.) The parties later settled their labor disagreement.

11 Now, ten years later, nearly the exact same scenario has occurred.

12 Plaintiff LAUSD hereby applies *ex parte* for a temporary restraining order and for an order  
13 requiring Defendant UTLA to show cause why a preliminary injunction should not issue pending  
14 trial in this action, enjoining UTLA and its officers, agents, representatives, and members from  
15 engaging in a strike announced by UTLA to take place commencing January 10, 2018, or from  
16 authorizing, advocating, encouraging, or participating in a strike and work stoppage, as well as  
17 boycotts, picketing, partial work stoppages and/or work slowdowns.

18 This application is made based on the authority in Labor Code section 1126, and pursuant to  
19 California Rules of Court 3.1150 and 3.1200 *et. seq.*, on grounds that a strike would be in violation  
20 of the parties' agreement, and injunctive relief is the authorized and appropriate relief to remedy the  
21 breach.

22 As set forth in the attached brief, LAUSD is making intense efforts to prepare for the  
23 threatened strike, but absent enforcement of contractual rights, LAUSD will be prejudiced and many  
24 tens of thousands of children will be placed at risk.

25 Defendant UTLA is represented by Ira L. Gottlieb, Esq., and Josh Adams, Esq., of Bush  
26 Gottlieb, 801 North Brand Boulevard, Suite 950, Glendale, CA 91203, [buddyg@bushgottlieb.com](mailto:buddyg@bushgottlieb.com)  
27 and [jadams@bushgottlieb.com](mailto:jadams@bushgottlieb.com). UTLA's counsel first advised LAUSD on January 7, 2019, that

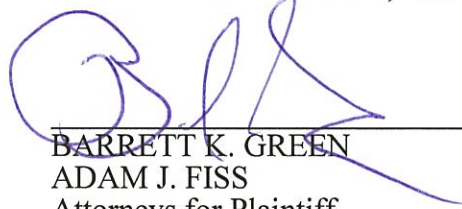
1 UTLA intended to apply ex parte on January 8, 2019, for declaratory relief that UTLA had complied  
2 with the requirements of the parties' agreement. Counsel for LAUSD replied to counsel for UTLA  
3 that LAUSD would oppose such an approach, and that LAUSD would concurrently seek a  
4 temporary restraining order and OSC re preliminary injunction against UTLA based on  
5 noncompliance with the agreement. LAUSD provided notice of this Application to UTLA before  
6 10:00 a.m. on January 7, 2019. UTLA has said it would oppose LAUSD's requested relief.  
7 Declaration of Barrett K. Green ¶ 2, 3, 4.

8 The relief sought by LAUSD is based upon this application and memorandum of points and  
9 authorities, declaration of notice, the declarations filed in support of this application and exhibits  
10 thereto, any other documents that may be filed, and such evidence and argument that may be  
11 presented at or before the hearing, or of which the Court may take judicial notice.

12 Dated: January 9, 2019

Respectfully submitted,

LITTLER MENDELSON, P.C.

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15 

16 BARRETT K. GREEN  
17 ADAM J. FISS  
18 Attorneys for Plaintiff  
19 LOS ANGELES UNIFIED SCHOOL  
20 DISTRICT  
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1 **I. SUMMARY OF ARGUMENT**

2 1. Labor Code section 1126 authorizes the Court to enforce terms of a collective  
3 bargaining agreement between an employer and a labor organization, including injunctive relief  
4 where warranted.

5 2. Good cause exists for the granting of injunctive relief to bar a strike that UTLA has  
6 been encouraging its members to engage in and that is set to commence January 10, 2019:

7 a. The parties have a bargaining agreement that contains a provision prohibiting  
8 UTLA from striking or encouraging a strike during the period of the agreement, and requires UTLA  
9 to take steps to avert a strike;

10 b. The agreement can be terminated on 10 days' notice one party to the other;

11 c. Until the 10 days elapses, the agreement is not terminated and UTLA is  
12 forbidden from encouraging a strike;

13 d. UTLA has as yet not provided the 10-day notice required under the agreement  
14 and therefore the parties' agreement is still in effect. Assuming *arguendo* that UTLA's passing  
15 reference in a January 3, 2019 email to a termination constituted proper notice, UTLA is in breach of  
16 the agreement because, even before the 10 days has elapsed, UTLA has been encouraging a strike;

17 e. LAUSD has no adequate remedy at law to enforce its contractual right to the  
18 requisite 10-day period before a strike is engaged in or encouraged. LAUSD students are at extreme  
19 danger of harm if LAUSD is not allowed the bargained-for notice to enable it to fully prepare for the  
20 threatened action.

21 3. In contrast, there is zero prejudice to UTLA in deferring the strike for a brief amount  
22 of time to comply with its contractual requirements, and allow the District the bargained-for notice.

23 4. Accordingly, it is requested that the Court issue a temporary restraining order and  
24 OSC re preliminary injunction restraining UTLA from (a) requesting, encouraging, condoning or  
25 ratifying any strike, slow down or other work stoppage by any unit member or sister-union, and (b)  
26 engaging in any strike, slow down or work stoppage.

1 **II. STATEMENT OF FACTS**

2 **A. Breach Of Collective Bargaining Agreement.**

3 **1. The Parties.**

4 LAUSD is the largest public school district in the State of California and the second largest  
5 public school district in the United States. Declaration of Robert Samples, ("Samples Decl."), ¶ 8-9.  
6 LAUSD serves over 500,000 students, and employs approximately 60,000 employees. *Id.* The  
7 District operates over 1,000 schools at the elementary, middle, and high school levels. It also  
8 operates several hundred early and adult education centers, and special schools. The District  
9 authorizes over 200 charter schools. *Id.* LAUSD is the second largest employer in Los Angeles  
10 County, after the county government, and the District's budget is in excess of \$7 billion. *Id.*

11 UTLA is the exclusive labor representative of the approximately 30,000 certificated  
12 employees and teachers of the District, including 24,000 classroom teachers, and hundreds of  
13 librarians, nurses, psychologists, counselors, and other LAUSD certificated employees. Samples  
14 Decl., ¶ 10.

15 **2. UTLA/LAUSD Bargaining Agreement Precluding Encouragement Of**  
16 **Strikes, And Requiring UTLA To "Take All Reasonable Steps To Avert**  
17 **A Strike."**

18 LAUSD and UTLA are parties to a bargaining containing a provision under the terms of  
19 which UTLA agreed not to engage in a strike or encourage a strike. Samples Decl., ¶ 11, 13.

20 The agreement also provides that in the event of a threatened strike, UTLA must take all  
21 reasonable steps to avert the strike. Samples Decl., ¶ 14.

22 The specific language of the agreement is contained in Article VI, Section 1.0 of the parties'  
23 agreement and provides as

24 **ARTICLE VI - WORK STOPPAGE**

25 1.0 Apart from and in addition to existing legal restrictions upon and  
26 remedies for work stoppages, UTLA agrees to the following:

27 **a. Neither UTLA nor its officers or representatives or affiliates**  
28 **shall cause, encourage, condone or participate in any strike,**  
**slowdown or other work stoppage during the term of this Agreement.**

1           **In the event of any actual or threatened strike, slowdown or other**  
2           **work stoppage, UTLA and its officers, representatives and affiliates**  
3           **will take all reasonable steps within their control to avert or end**  
4           **the same; and**

5           b. Any employee engaging in any strike, slowdown, or other work  
6           stoppage during the term of this Agreement shall be subject to  
7           discipline or termination under applicable law.

8           Samples, Ex. 1.

9           Article VI, Section 1.1 of the parties' agreement provides that any disputes arising under this  
10          Article shall be handled through appropriate judicial proceedings, as follows:

11                 1.1 Disputes arising under this Article are to be handled according to  
12                 appropriate judicial proceedings rather than the grievance procedures  
13                 of Article V.

14          Samples, ¶ 16.

15          The initial agreement covered the 2014-15 to 2016-17 school years with "reopeners" in the  
16          2015-16 and 2016-17 school year.

17          Samples, ¶ 17.

18          The 2015-16 school year reopeners resulted in amendments to the agreement in a Reopener  
19          Agreement entered into on May 17, 2016.

20          Samples, ¶ 18.

21          Since that time, the parties have as yet not agreed on the terms of 2016-17 reopeners or a  
22          successor agreement.

23          Samples, ¶ 19.

24          The parties' agreement contains a clause covering how the parties should handle terms of the  
25          agreement until such time as a successor agreement is entered into. The clause explains that the  
26          agreement shall remain in effect until such time as one side gives the other side 10 days' notice of  
27          termination.

28          Samples, ¶ 20, Ex. 13.

            This language is contained in Article XXXII, Section 1.0, and provides as follows:

            1.0 This Agreement shall be for a term of three (3) years (2014-2015  
            through 2016-2017). It shall become effective upon final Board  
            adoption, excepting those provisions which specify that they are to be

made effective at a different date. **This Agreement** shall remain in full force and effect, pursuant to its terms, to and including June 30, 2017 and thereafter **shall remain in effect on a day-to-day basis until terminated by either party upon ten (10) days' written notice.** . . .

Samples, ¶ 19.

This termination provision is not only applicable to the strike clause, but also to all of the remaining provisions of the agreement, including for example the arbitration provision, which would not otherwise survive the expiration of the agreement, but with which LAUSD has continued to comply. (See, e.g., *State of California (Department of Youth Authority)* (1992) PERB Decision No. 962-S.)

### 3. Status Of Negotiations On Successor Agreement.

Commencing Spring 2017 and through until July 2018, UTLA and LAUSD engaged in bargaining on a successor to the bargaining agreement. Samples Decl. ¶ 22-23.

Thereafter, UTLA declared in July 2018 that the parties were at an “impasse” and Educational Employment Relations Act (“EERA”) State-mandated impasse procedures were implemented that included three mediation sessions in September and October 2018. *Id.* After mediation did not result in a resolution of the impasse, the parties proceeded to “factfinding,” a process set forth in the EERA, whereby a neutral factfinder makes recommendations for settlement of the dispute. *Id.* A factfinding hearing was held on December 3 and 4, 2018, and a factfinding report was issued on December 17, 2018, containing recommendations to resolve the items in dispute. Samples Decl. ¶ 23.

Under the EERA and applicable law, the factfinding report must be reviewed in good faith in order to determine whether it might help break the impasse and allow the parties to resolve their disputes. (*PERB v. Modesto City Schools District* (1982) 136 Cal.App.3d 881; *Modesto City Schools* (1983) PERB Decision No. 291.)

After the report was issued LAUSD invited UTLA to return to the table and work out their differences. UTLA initially refused and stated that it planned to strike. However, UTLA eventually agreed to return to the table and, on January 7, 2018, the parties had their first post-factfinding bargaining session. The second session is set for tomorrow, January 9, 2019. Samples Decl. ¶ 24.

1                   **4. Course Of Dealings Related To UTLA's Purported Notice Of**  
2                   **Termination Of Agreement.**

3                   At no time from June 2017 to the present has UTLA provided LAUSD a notice of  
4                   termination of the parties' agreement. Samples Decl. ¶ 25.

5                   Commencing December 18, 2019 (right after the factfinding report was issued), LAUSD  
6                   continued to seek to reengage UTLA in bargaining. Samples Decl. ¶ 26.

7                   During that same time frame, UTLA stated that it planned to strike "if necessary," issuing  
8                   press releases containing such statements as:

9                   1. "If we strike, it will be a strike for our students." (December 19, 2018 UTLA Press  
10                  Release.) Samples Decl. ¶ 27, Ex. 4.

11                  2. "More than 34,000 experienced educators are prepared to go on strike if we have to."  
12                  (December 28, 2018 UTLA Press Release.) Samples Decl. ¶ 27, Ex. 5.

13                  3. "If the district forces us to strike on January 10, it is crucial that every single one of  
14                  us participate in that strike." (December 28, 2018 UTLA posting to unit members.)  
15                  Samples Decl. ¶ 27, Ex. 6.

16                  4. "If we have to strike, the UTLA Officers, like you, will be sacrificing pay every day."  
17                  Id.

18                  5. "Every Effort To Avoid A Strike, But We Will Win If We Have To Strike." Id.

19                  6. "If we stay disciplined, focused, and 100% collective and participatory in whatever  
20                  we do, up to and including a strike if necessary, there is great reason for optimism that we  
21                  will win." Id.

22                  7. "It may take a strike to do it, but we will win." Id.

23                  8. "We know that our members are ready to strike if we are forced to." Id.

24                  Thereafter, in an email dated January 3, 2019, UTLA for the first time made a reference to  
25                  the termination clause in the agreement. In the January 3, 2019 email, UTLA claimed that a  
26                  reference in the factfinding report to the status of the parties' agreement constituted the notice of  
27                  termination of the agreement under Article XXXII, Section 1.0. Samples Decl. ¶ 29, Ex. 8.

28                  The UTLA email provided in relevant part, as follows:

8.



1 Hi Rob,

2 I write to follow up on our email exchanges about the current status of  
3 bargaining, and to reaffirm the urgency of our current circumstances.

4 The neutral fact-finder declared on December 17, 2018 that our  
5 contract has expired, and with the Union's public announcement the  
6 next day of the January 10 strike date (which the District has  
7 acknowledged and requested PERB to enjoin), the District was on  
8 notice that the contract is terminated. This is to confirm that notice and  
9 the Union's resolve, and to express the importance of genuinely  
10 exhausting all bargaining avenues before a strike, which no one wants  
11 to see happen. Accordingly, I want to reiterate our request that  
12 LAUSD send UTLA a detailed formal proposal as soon as possible.

13 (Id.)

14 Up until this note, UTLA had never made any claim that it was terminating the agreement,  
15 and LAUSD had been operating under the assumption that the agreement was in effect. Samples  
16 Decl. ¶ 30, and Ex. 9.

17 Upon receipt of the January 3, 2019 email, LAUSD replied that in no way could a statement  
18 in factfinding report by a panel member constitute the notice of termination under Section XXXII.

19 LAUSD's reply provided as follows:

20 Dear Jeff,

21 As you know, under Article XXXII, Section 1.0, the terms of the  
22 Agreement remain in effect until one party provides written notice of  
23 termination to the other side, as follows:

24 This Agreement shall remain in full force and effect, pursuant  
25 to its terms, to and including June 30, 2017 and thereafter shall  
26 remain in effect on a day-to-day basis until terminated by either  
27 party upon ten (10) days' written notice.

28 A reference in a factfinding report to the status of negotiations is in no  
way a notice of termination under Section 1.0. It is neither a notice  
from UTLA to LAUSD, nor a notice of termination. Please be assured  
that we will seek enforcement of the requirements of Article XXXII,  
Section 1.0.

We look forward to seeing you at the Monday negotiations, which we  
will hope will resolve the contract issues.

Rob

(Id.)

Thereafter, yesterday, January 7, 2018, UTLA provided LAUSD ex parte notice that UTLA

1 intended to apply to the court for declaratory relief to the effect that its January 3, 2019 email  
2 constituted a 10-day notice under the agreement, and that UTLA should at least be able to strike on  
3 Monday, January 14, 2019, just over 10 days later. (Green Decl.)

4 UTLA's ex parte notice explained UTLA's legal position as follows:

5 In sum, the Union will argue that:

6 1. No termination notice was needed because the "no strike"  
7 provision of Article VI expired on June 30, 2017.

8 2. Even if Article VI remained in effect, the District received  
9 effective notice of termination of the contract as of the date of its  
receipt of UTLA Executive Director Jeff Good's July letter declaring  
impasse.

10 3. In any event, based on the email from Mr. Good to Mr.  
11 Samples of January 3, the 10 days' notice, if applicable, would be  
12 fulfilled by January 13, removing any contractual barrier from the  
strike beginning January 14, 2019.

13 (Green Decl.)

14 **5. UTLA's Ongoing Noncompliance With The Strike Provisions.**

15 Under the parties' agreement, the terms of the agreement remain in effect until 10 days from  
16 the date one part gives notice to the other party.

17 Prior to and during that 10-day period, the agreement is in effect, including the strike clause.  
18 This means that until the 10 days' elapses from the date of the notice, (1) UTLA may not strike or  
19 encourage a strike, and (b) must take affirmative steps to avert a strike. Once the 10-day period  
20 elapses, UTLA is no longer precluded from striking<sup>1</sup> or from encouraging a strike, and is no longer  
21 required to "take all reasonable steps within their control to avert" the strike.

22 Contrary to UTLA's commitments, within at least the past several weeks if not longer, (1)  
23 UTLA has been encouraging a strike, and (2) UTLA has failed to take all reasonable steps to avert  
24 the strike.

25 Instead, UTLA has been actively promoting the strike, including among other things:

- 26 1. Posting official messages on its web site calling for and encouraging the strike;  
27 2. UTLA officials sending emails to unit members promoting the strike;

28 <sup>1</sup> Under the agreement. This is not a concession that UTLA's strike would otherwise be lawful.

1           3.       UTLA officials issuing press releases and other communications in support of the  
2 strike;

3           4.       Issuing Tweets on its Twitter accounting encouraging the strike;

4           5.       Posting Calendar messages on its web site, confirming the strike date.

5 (Samples Decl. at, e.g., ¶ 7, 10, 11. )

6                   **6.       LAUSD Is Making Intense Efforts To Prepare For The Threatened**  
7                   **Strike, But Absent Enforcement Of Contractual Rights, LAUSD Will Be**  
8                   **Prejudiced And Many Tens Of Thousands Of Children Will Be Placed At**  
9                   **Risk.**

10           Mindful that at some point UTLA might engage in a strike, LAUSD has been making strike  
11 preparations. However, at no time until around January 2, 2019, did LAUSD receive any notice  
12 from UTLA that its strike date of January 10, 2019, was definitive.

13           As more fully set forth in the declarations filed concurrently herewith, LAUSD is making  
14 intense efforts to prepare for the threatened strike, but absent enforcement of contractual rights,  
15 LAUSD will be prejudiced and many tens of thousands of children will be placed at risk.

16           The risks include the following:

17           1.       Severe risk to student safety resulting from inadequate adult supervision at school.  
18 (Declaration of Steven K. Zipperman ("Zipperman Decl."), ¶ 7; Declaration of Linda Del Cueto  
19 ("Del Cueto Decl."), ¶¶ 5, 8, 17; Declaration of Nader Delnavaz ("Delnavaz Decl."), ¶¶ 5, 10, 11;  
20 Declaration of Michael Romero ("Romero Decl."), ¶¶ 12, 14; Declaration of Eugene Hernandez  
21 ("Hernandez Decl."), ¶¶ 12 & 13; Declaration of Steven Munoz ("Munoz Decl."), ¶ 7; Declaration  
22 of Terry Ball ("Ball Decl."), ¶¶ 7-23; Declaration of Alma Kimura ("Kimura Decl."), ¶¶ 5-9, 17 18;  
23 Declaration of Pia Escudero ("Escudero Decl."), ¶ 4.)

24           2.       Severe risk to safety to of the public due to strike activities and students' presence  
25 outside of schools. (Zipperman Decl., ¶¶ 4, 5, 9. Del Cueto Decl., ¶ 9. Zipperman Decl., ¶ 9.)  
26  
27  
28

3. Severe risks due to the presence of communicable diseases, need for general health care services, damage to students' mental health, and special needs of vulnerable students with disabilities. *See* Escudero Decl., ¶ 5-14; Romero Decl., ¶ 12; Declaration of Alvaro Cortes ("Cortes Decl."), ¶ 10, ¶ 11; Zipperman Decl., ¶ 8; Declaration of Beth Kauffman ("Kauffman Decl."), ¶ 4, 5, 6, 8-10; Declaration of Deneen Cox ("Cox Decl."), ¶ 7, 8; Del Cueto Decl., ¶ 13; Delnavaz Decl., ¶ 9, 10, 14, 18; Kimura Decl., ¶ 14, 15; Escudero Decl., ¶ 18.

4. Severe disruption to student learning due to loss of instruction and long-term friction between school staff members. Romero Decl., ¶ 9 16 17. *See* Ball Decl., ¶ 6 9 16 17 18; Kimura Decl., ¶ 11 12 13. Escudero Decl., ¶ 15 20; Kauffman Decl., ¶ 17; Hernandez Decl., ¶¶ 7 13 & 15. Delnavaz Decl., ¶ 6 13; Del Cueto Decl., ¶ 6 7 11. Declaration of Joseph Stark ("Stark Decl."), Stark Decl., ¶¶ 3 5 & 6 9 10. 12.

5. Severe risk to funding and resources due to increased exposure to liability and loss of student enrollment and attendance. Kauffman Decl., ¶¶ 7, 11, 13, 14, 15; Delnavaz Decl. ¶ 7 8; Cox Decl., ¶ 4, 5, 6, 9, 10, 11; Del Cueto Decl., ¶¶ 14-16; Hernandez Decl., ¶ 16; Ball Decl., ¶ 22; Kimura Decl., ¶ 16; Romero Decl., ¶ 21; Hernandez Decl., ¶ 18; Cortes Decl., ¶ 3, 13; Zipperman Decl., ¶ 10; Stark Decl., ¶¶ 3, 6, 7, 8.

6. Severe risk to students' futures through disruption to athletic activities and the college admissions process. Declaration of Trent Cornelius ("Cornelius Decl."), ¶ 4-7; Ball Decl., ¶ 19, 20. Del Cueto Decl., ¶ 12; Escudero Decl., ¶ 16, 17; Stark Decl., ¶ 13.

### III. LEGAL ARGUMENT

#### A. The Criteria For Injunctive Relief Exist In This Case.

Labor Code section 1126 expressly authorizes the enforcement of a bargaining agreement, including injunctive relief.

The criteria for injunctive relief are set forth in Code of Civil Procedure section 526. Many of these criteria are met in this case, including the following:

(a) An injunction may be granted in the following cases:

(1) When it appears by the complaint that the plaintiff is entitled to the relief demanded, and the relief, or any part thereof, consists in

1 restraining the commission or continuance of the act complained of,  
2 either for a limited period or perpetually.

3 (2) When it appears by the complaint or affidavits that the commission  
4 or continuance of some act during the litigation would produce waste,  
5 or great or irreparable injury, to a party to the action.

6 (3) When it appears, during the litigation, that a party to the action is  
7 doing, or threatens, or is about to do, or is procuring or suffering to be  
8 done, some act in violation of the rights of another party to the action  
9 respecting the subject of the action, and tending to render the judgment  
10 ineffectual.

11 (4) When pecuniary compensation would not afford adequate relief.

12 (5) Where it would be extremely difficult to ascertain the amount of  
13 compensation which would afford adequate relief.

14 It is respectfully submitted that the criteria set forth in sections (a)(1) through a(a)(5) are met  
15 in this case, as follows:

16 1. LAUSD is seeking to enjoin UTLA from persisting in a violation of the parties'  
17 agreement;

18 2. If UTLA is not enjoined, acts during the litigation would produce great or irreparable  
19 injury to LAUSD's students on whose behalf this action is being advanced.

20 3. Were UTLA's wrongful conduit not enjoined, an adjudication after the fact would  
21 deny LAUSD the benefit of its agreed-upon bargain.

22 4. No amount of money after the fact could restore the status quo in the event of a  
23 premature strike.

24 5. It would be very difficult to quantify the precise damages were a trial for money  
25 damages undertaken.

26 **B. Ex Parte And TRO Relief Is Warranted.**

27 Both sides agree that *ex parte* relief is warranted because UTLA's threatened strike is now  
28 apparently imminent., and the parties require the assistance of the Court in declaring their respective  
rights and obligations.

With respect to the TRO standard, a premature strike would place at risk the health and  
safety of many vulnerable children, including students with disabilities who have a right under

1 federal law and a federal consent decree to receive a free appropriate public education (“FAPE”).  
2 Specifically, irreparable harm to the District and its students include: (1) severe risk to student safety  
3 resulting from inadequate adult supervision at school; (2) severe risk to safety to of the public due to  
4 strike activities and students’ presence outside of schools; (3) severe risks due to the presence of  
5 communicable diseases, need for general health care services, damage to students’ mental health,  
6 and special needs of vulnerable students with disabilities; (4) severe disruption to student learning  
7 due to loss of instruction and long-term friction between school staff members; (5) severe risk to  
8 funding and resources due to increased exposure to liability and loss of student enrollment and  
9 attendance; and (6) severe risk to students’ futures through disruption to athletic activities and the  
10 college admissions process. *See generally* Samples Decl.; Ball Decl.; Cornelius Decl.; Cortes Decl.;  
11 Cox Decl.; Del Cuerto Decl.; Delnavaz Decl.; Esudero Decl.; Hernandez Decl.; Kauffman Decl.;  
12 Kimura Decl.; Munoz Decl.; Romero Decl.; Stark Decl.; and Zipperman Decl.

13 Further, if UTLA were allowed to strike while the District awaited hearing on a regularly  
14 noticed proceeding for injunctive relief, and Plaintiff later prevailed in obtaining injunctive relief, it  
15 would be impossible to cure the deficiency because the strike will already have commenced and the  
16 irreparable harm will have already been inflicted. By that time, a strike would have occurred – the  
17 core event this action seeks to avoid – and no damages or remedy at law after the fact would be able  
18 to undo the violating conduct. Thus, absent issuance of a temporary restraining order by way of this  
19 *ex parte* Application, the strike will indeed commence and the District and its students will suffer  
20 immediate and irreparable harm.

21 In deciding whether to issue a preliminary injunction, the Court must weigh two interrelated  
22 factors: (i) the likelihood that plaintiff will ultimately prevail on the merits, and (ii) the relative  
23 interim harm to the parties from the issuance or non-issuance of the injunction. *Hunt v. Superior Ct.*,  
24 21 Cal.4th 984, 999 (1999); *14859 Moorpark Homeowner’s Ass’n v. VRT Corp.*, 63 Cal.App.4th  
25 1396, 1402 (1998). “The latter factor involves consideration of such things as the inadequacy of  
26 other remedies, the degree of irreparable harm, and the necessity of preserving the status quo.”  
27 *14859 Moorpark*, 63 Cal.App.4th at 1402. A mix of potential-merit and interim-harm facts must

1 guide the Court's determination; the greater the plaintiff's showing on one, the less must be shown  
2 on the other to support an injunction. *Butt v. State of Cal.*, 4 Cal.4th 668, 678 (1992).

3 It is respectfully submitted that good cause exists for the granting of injunctive relief to bar a  
4 strike that UTLA has been encouraging its members to engage in and that is set to commence  
5 January 10, 2019:

6 1. Labor Code section 1126 authorizes the Court to enforce terms of a collective  
7 bargaining agreement between an employer and a labor organization, including injunctive relief  
8 where warranted.

9 2. The parties have a bargaining agreement that contains a provision prohibiting UTLA  
10 from striking or encouraging a strike during the period of the agreement, and requires UTLA to take  
11 steps to avert a strike. The agreement can be terminated on 10 days' notice one party to the other.

12 3. Until the 10 days elapses, the agreement is not terminated and UTLA is forbidden  
13 from encouraging a strike.

14 4. UTLA has as yet not provided the 10-day notice required under the agreement and  
15 therefore the parties' agreement is still in effect. Assuming arguendo that UTLA's passing reference  
16 in a January 3, 2019 email to a termination constituted proper notice, UTLA is in breach of the  
17 agreement because, even before the 10 days has elapsed, UTLA has been encouraging a strike.

18 5. LAUSD has no adequate remedy at law to enforce its contractual right to the requisite  
19 10-day period before a strike is engaged in or encouraged. LAUSD students are at extreme danger  
20 of harm if LAUSD is not allowed the bargained-for notice to enable it to fully prepare for the  
21 threatened action.

22 6. In contrast, there is zero prejudice to UTLA in deferring the strike for a brief amount  
23 of time to comply with its contractual requirements, and allow the District the bargained-for notice.

24 7 Accordingly, it is requested that the Court issue a temporary restraining order and  
25 OSC re preliminary injunction restraining UTLA from (a) requesting, encouraging, condoning or  
26 ratifying any strike, slow down or other work stoppage by any unit member or sister-union, and (b)  
27 engaging in any strike, slow down or work stoppage.

1        These factors strongly favor issuance of the requested temporary restraining order and order  
2 to show cause. Moreover, the numerous aforementioned District Declarations demonstrate that a  
3 strike will cause damage to the District and have significant adverse and irreparable effects on the  
4 health and safety of its students. Cal. Code Civ. Proc. § 526(a)(2). Nor is there an adequate legal  
5 remedy to address the strike, as pecuniary compensation will not afford adequate relief to the District  
6 and its students, who will be denied education and put in unsafe and unhealthy educational  
7 environments. Cal. Code Civ. Proc. § 526(a)(4). Finally, there is no question that the irreparable  
8 harm to the District is imminent. In the present matter, UTLA intends to proceed with its job action  
9 on January 10, 2019 unless it is enjoined from doing so by this Court.

10        **C.        UTLA Will Suffer No Very Little Harm If A Temporary Restraining Order**  
11        **Issues.**

12        There is no emergency need for UTLA to proceed with its threatened strike. It can defer the  
13 strike until it has complied with its contractual commitments.

14        Further, courts recognize that injunctive relief to maintain status quo is appropriate where  
15 governmental or essential services are at stake. *City and County of San Francisco v. Evankovich*, 69  
16 Cal.App.3d 41 (1977); *see LA Sanitation*, 38 Cal.3d 564 (1985) (holding that governmental services  
17 must not be interrupted). Such essential services are at stake in the present matter.

18        Thus, the balance of hardship weighs in favor of the District and in favor of granting a  
19 temporary restraining order and preliminary injunction against UTLA.

20        **IV.        CONCLUSION**

21        For the foregoing reasons and for good cause shown, the District respectfully requests that  
22 the Court grant its *ex parte* Application for Order to Show Cause and for a Temporary Restraining  
23 Order:

24        (1)        Enjoining UTLA from requesting, encouraging, condoning, or ratifying any strike, or  
25 partial or full work stoppage, by any UTLA unit member or sister-union to UTLA;  
26  
27  
28



1 (2) Enjoining the members of UTLA from engaging in any strike, or partial or full work  
2 stoppage.

3 Dated: January 9, 2019

Respectfully submitted,

LITTLER MENDELSON, P.C.

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